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In The

Supreme Court of the United States

October Term, 1974

No. 74-1613

RAYMOND C. PACE, City Sheriff,
Petitioner,

v.

STEPHEN EARL SQUIRE,
Respondent,

BRIEF OF RESPONDENT IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

JOHN C. LOWE
F. GUTHRIE GORDON, III
American Civil Liberties Union of Va.
1111 W. Main St.
Charlottesville, Va. 22903

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PRELIMINARY STATEMENT

The Respondent, Stephen Earl Squire, respectfully prays that a Writ of Certiorari to the Fourth Circuit of Appeals entered in this case on May 20, 1975, not be granted.

OPINIONS BELOW

The Opinions of the United States District Court for the Western District of Virginia, Charlottesville Division, filed August 9, 1974, is reported as *Squire v. Pace*, 380 F. Supp. 269 (W.D. Va. 1974), and is contained as Appendix A (App. 1-21) of Petitioner's Petition for Writ of Certiorari. The Opinion of the United States Court of Appeals for the Fourth Circuit entered May 20, 1975, is not reported and is included in Petitioner's Petition for Writ of Certiorari as Appendix B (App. 22-24).

JURISDICTION

The Petitioner asserts that the jurisdiction of this Court to issue the Writ of Certiorari is grounded upon 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Is the Virginia Disorderly Conduct Statute Unconstitutionally Vague or Overbroad?

STATUTES INVOLVED

§ 18.1-253.2 ,Code of Virginia (1950), As Amended

> Disorderly conduct in other public places; power of counties, cities and towns to adopt ordinances and resolutions.—If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section (§ 18.1-253.1), or causes any unnecessary disturbance in or on any public conveyance, by running through it, climbing through windows or upon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying passengers or employees therein, he shall be guilty of a misdemeanor.
>
> Cities, towns and counties are hereby authorized and empowered to adopt ordinances or resolutions prohibiting and punishing the above acts, or any of them, when committed in such cities, towns, or counties and such ordinances or resolutions shall provide the same punishment for a violation thereof as is provided by this section, anything in charters of such cities or towns to the contrary notwithstanding. All fines imposed for the violation of such ordinances or resolutions shall be paid to and retained by such cities, towns and counties, and the Commonwealth shall not be

chargeable with any costs in connection with any prosecution for the violation of any such ordinances or resolutions.

§ 18.1-255, Code of Virginia (1950), As Amended

Punishment for using abusive language to another.—If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a misdemeanor, and on conviction fined in any sum not less than two dollars and fifty cents nor more than five hundred dollars, in the discretion of the jury or the judge trying the case without a jury.

§ 4533, Code of Virginia (1946)

Riotous or disorderly conduct in certain public places.—If any person behaves in a riotous or disorderly manner in any street, highway, public building, or any other public place, other than those mentioned in the preceding section, or causes any unnecessary disturbance in any street car, railroad car, omnibus or other public conveyance, by running through it, climbing through windows or opon the seats, failing to move to another seat when lawfully requested to so move by the operator, or otherwise annoying passengers or employees therein, he shall be guilty of a misdemeanor.

CONSTITUTION

First Amendment to the Constitution of the United States

Congress shall make no law respecting an establish-

ment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment to the Constitution of the United States

All persons born or nauralized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Respondent agrees that the statement of the case as presented by the Petitioner is substantially correct, but Petitoner denies that the first two paragraphs in the statement of the case are in any way relevant to the proceedings in this case.

Petitioner further asserts that the language on the sign in question related to the then ongoing war in Vietnam and said, "We kill millions to avoid a bloodbath" or words to that affect.

Respondent further notes that in the initial conviction in the Municipal Court of the City of Charlottesville on May 11, 1972, the Municipal Judge, sitting without a jury, announced specifically that carrying a sign accusing the military of murder constituted disorderly conduct under Virginia law.

ARGUMENT

I.

The Virginia Disorderly Conduct Statute is Unconstitutionally Vague and Overbroad

Respondent asserts primarily that the excellent reasoning of Judge James C. Turk, as affirmed by the Fourth Circuit Court of Appeals, is dispositive of the issues in the case, *Squire v. Pace* 380 F. Supp. 269 (W.D. Va. 1974).

It is important to note that Judge Turk did not even need to play one of Respondent's most powerful cards, namely that language virtually identical to that which the Supreme Court of Virginia has applied to the Virginia Disorderly Conduct Statute in *Hackney v. Commonwealth* 186 Va. 888, 45 SE 2d 241 (1947) led to a finding of unconstitutionality of a disorderly statute in *Wiegand v. Seaver* 504 F. 2d 303 (5th Cir. 1974). See also *Severson v. Duff*, 322 F. Supp. 4 (N.D. Fla. 1960).

In the *Hackney* case, supra, the Supreme Court of Virginia observed "a person violates the statute if . . . his conduct is such as tends to corrupt public morals or to outrage the sense of decency of others . . ." 186 Va. at 892.

The Petitioner goes on to argue that the 1973 Virginia case, *Mercer v. Winston*, 214 Va. 281, 199 SE 2d 724 (1973), interpreting § 18.1-255 of the Code of Virginia ("fighting words") somehow helps define § 18.1-253.2 of the Code of Virginia ("disorderly conduct").

It is not explained by the Petitioner how the "fighting words" decision can affect the disorderly conduct statute, especially in light of the fact that the Municipal Court Judge, interpreting the disorderly conduct statute, found that language on the sign alone, accusing the military of

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murder, was sufficient to constitute disorderly conduct under the Virginia statute.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN C. LOWE
F. GUTHRIE GORDON, III
American Civil Liberties Union of Virginia
1111 W. Main St.
Charlottesville, Va. 22903

CERTIFICATE OF SERVICE

I, F. Guthrie Gordon III, counsel for the Respondent of the caption matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 21st day of July 1975, I mailed three copies of the foregoing Brief for the Respondent in opposition to the granting of a petition for Writ of Certiorari to each of the following:

Andrew P. Miller
Attorney General of Virginia
Supreme Court-State Library Building
Richmond, Virginia 23219

Linwood T. Wells, Jr.
Assistant Attorney General
Supreme Court-State Library Building
Richmond, Virginia 23219

counsel for Petitioner.

F. GUTHRIE GORDON, III